

Serial No. 09/545,334
Group Art Unit: 1635

- (iii) A replacement paragraph, marked up to show all changes relative to the previous version of the paragraph, is attached. For the Examiner's convenience the Applicants point out that the only changes are in correcting the reference to the provisional patent application, and in adding the reference to the utility patent application, for the maize *end2* promoter.

RESPONSE TO SECOND RESTRICTION REQUIREMENT

In view of the Applicants' Response to the Restriction Requirement of August 14, 2001, and the Response to Non-Compliant Amendment filed by Applicants on May 9, 2002, the Examiner has issued a superseding Restriction Requirement that the Applicants elect a single disclosed species of cytokinin modulating gene, or a specific combination of cytokinin modulating genes, and a single disclosed species of promoter.

Applicants elect the cytokinin modulating gene isopentenyl transferase, *ipt*, and the promoter *end2*. Applicants expressly reserve the right to file divisional applications or take such other appropriate measures as are deemed necessary to protect nonelected species.

STATUS OF THE CLAIMS

The pending Restriction Requirement states that Claims 1-5, 7-11, 13, 14, 17, 18, 20-24, 26, 27, 30, 32-36, 38, 39 and 42-47 are pending in the application and that no claims have been withdrawn from consideration. Claims 6, 12, 15-16, 19, 25, 28-29, 31, 37, 40, and 41 were canceled by the Applicants in the Response of May 9, 2002, as readable on non-elected species.

In light of the new Restriction Requirement, and as provided in 37 C.F.R. 1.121(c)(2), Applicants hereby present new Claims 48-59 which essentially reinstate former Claims 6, 12, 15-16, 19, 25, 28-29, 31, 37, 40, and 41.

No change of inventorship is required due to this election.

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Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned agent so that examination can be expedited.

Fees for extension of time are provided for in documents accompanying this paper. It is believed that, as there is no net addition of claims over the originally-filed application, no excess claims fees are due. However, in the event that additional fees are necessary to allow consideration of this paper, such fees are hereby authorized to be charged to Deposit Account # 16-1852.

Respectfully submitted,



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